

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

Georgia-Pacific Corporation

**AGREED ORDER FOR INTERIM
ACTION**

NO. DE _____

TO: Georgia-Pacific Corporation
133 Peachtree Street N.E.
P.O. Box 105605
Atlanta, Georgia 30348-5605

I.
JURISDICTION

This Agreed Order ("Order") is issued pursuant to the authority of
RCW 70.105D.050(1).

II.

FINDINGS OF FACT

The Department of Ecology (hereinafter “ Ecology”) makes the following Findings of Fact, without admission of such facts by Georgia-Pacific Corporation (hereinafter “G-P”).

1. G-P is the partial owner of aquatic bedland property known as the G-P Log Pond, (hereinafter “ Log Pond “) which is located on G-P’s pulp and paper mill at West Laurel Street, Bellingham, Washington, 98225. The Log Pond is a sub-unit of the Whatcom Waterway Site.

2. While the Port of Bellingham also currently owns a portion of the Log Pond, G-P has entered into a separate agreement with the Port of Bellingham that assigns authority for said properties to G-P. G-P has owned and operated a pulp and paper mill in Bellingham, Washington, located directly adjacent to the Log Pond since the 1960’s.

3. From 1965 through 1979, G-P discharged wastewater containing mercury to the Whatcom Waterway from G-P’s chlor-alkali plant located at its pulp and paper mill.

4. Pursuant to the conduct of a Remedial Investigation/Feasibility Study (RI/FS) of the Whatcom Waterway Site performed under Agreed Order Number DE 95TC-N399, sediments at the Log Pond have been determined to contain hazardous substances including mercury and phenol.

5. In order to protect human health and the environment and to prevent the release or threatened release of hazardous substances from the Log Pond, an interim action is necessary to eliminate or substantially reduce pathways for exposure to hazardous substances.

III.

ECOLOGY DETERMINATIONS

1. The Log Pond is a facility as defined in RCW 70.105D.020 (4), G-P is an "owner or operator" of that facility as defined at RCW 70.105D.020(12), and G-P is a generator as defined at RCW 70.105D.040(1)(c).

2. Mercury and phenol are the substances found at the Log Pond, a sub-unit of the Whatcom Waterway Site, and are "hazardous substances" as defined at RCW 70.105D.020(7).

3. Based on the presence of hazardous substances at the Log Pond and all factors known to the Department, there is a release or threatened release of hazardous substances from the Log Pond, as defined at RCW 70.105D.020(20).

4. By letter dated March 6, 1995, Ecology notified G-P of its status as a "potentially liable person" for the Whatcom Waterway Site under RCW 70.105D.040 after notice and opportunity for comment.

5. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.

6. Based on the foregoing facts, Ecology believes the interim remedial action required by this Order is in the public interest.

IV.

WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, Ecology and G-P agree that G-P will take the following interim remedial actions and that these actions be conducted in accordance with the Model Toxics Control Act (MTCA; Chapter 173-340 WAC), and the Sediment Management Standards (SMS; Chapter 173-204 WAC), unless otherwise specifically provided for herein.

1. Purpose and Scope of the Interim Remedial Work (the “Work”).

The purpose of the Work will be to remediate contaminated sediments and concurrently accomplish habitat restoration in the Log Pond by capping. The need for sediment remedial action at the Log Pond is described in detail in the Draft Final Whatcom Waterway Site RI/FS, hereby incorporated into this Agreed Order by reference. Consistent with the draft Bellingham Bay Comprehensive Strategy Environmental Impact Statement, the Work will implement an important first stage of an integrated baywide sediment cleanup, source control, habitat restoration, and aquatic land use plan.

Capping of the Log Pond provides an effective permanent cleanup remedy, and can concurrently provide significant habitat enhancement and restoration benefits, primarily by softening the slope and shallowing these areas to provide optimal feeding and refuge habitats and migratory corridors for salmonids and other resources. The Work would restore similar habitats that existed historically within this area of Bellingham Bay.

2. Description of the Work.

Work to be performed by G-P includes remedial design, remedial action/construction, and operation, maintenance, and performance monitoring, as described below. The work to be performed by G-P is described in more detail in Exhibit A – Statement of Work, attached and hereby incorporated by reference as an enforceable part of this Agreed Order.

2a. Remedial Design Activities.

Remedial design activities will include the completion of planning activities and deliverables associated with preparation for implementation of the Work. G-P shall submit the Draft Final Design when the design effort is approximately 90 percent complete. The Draft Final Design shall incorporate final design data collection as described in Exhibit A. The Draft Final Design submittals shall include the following:

- Design Analysis.
- Construction Quality Assurance Plan.
- Remedial Action Health and Safety Plan specifications.
- Draft Operation, Maintenance and Monitoring Plan (OMMP).
- Plans and general specifications.
- Project schedule.

The Draft Final Design shall serve as the Final Design if Ecology has no further comments and issues the notice to proceed. Otherwise, the Final Design shall fully address all comments made to the Draft Final Design. However, the Final OMMP will not be submitted to Ecology until construction is complete, as outlined below.

As set forth in RCW 70.105D.090 and in Section V.12 below, Ecology will ensure substantive compliance of this action with the Shoreline Substantial Development and

Critical Areas Ordinance normally administered by the City of Bellingham and Hydraulic Project Approval normally administered by the Washington Department of Fish and Wildlife. G-P will obtain separate permits for this action under the Clean Water Act Section 404 (U.S. Army Corps of Engineers), including Endangered Species Act (ESA) Consultation (U.S. Fish & Wildlife Service and National Marine Fisheries Service).

2b. Remedial Action Activities.

The Work will cap and convert sediments at the Log Pond that exceed SMS criteria, along with intertidal riprap, sheet pile, bulkheads, and concrete debris areas, into a silt-sand mudflat that will comply with applicable sediment quality criteria and enhance habitat functions. The bottom (Phase I) layer of the cap will be constructed with sand, and will be placed in a manner that minimizes the potential for mixing of the cap with underlying sediments. Finer-grained native silt material will be used for the final (Phase II) cap surface, providing a base seeding of endemic Bellingham Bay benthic fauna, facilitating rapid colonization of the mudflat.

Exhibit A – Statement of Work - describes in more detail each phase of the Work.

2c. Operation, Maintenance, and Monitoring Plan.

G-P shall submit for Ecology approval a Draft OMMP as part of the Draft Final (90%) Design submittal, as described above. The Final OMMP shall be submitted to Ecology following completion of construction. The Final OMMP shall include the following elements:

- Description of normal operation and maintenance;
- Description of routine monitoring and laboratory testing, including data collection, laboratory tests, and their interpretation; and

- Corrective action to be implemented in the event that performance standards are exceeded.

Long-term monitoring and maintenance at the Log Pond will be performed as set forth in the final Log Pond OMMP approved by Ecology.

2d. Reporting.

A cleanup report will be prepared and submitted to Ecology within 90 days after completing the construction phases of the Work. The report will describe cap placement methods, final cap surface elevations, and site observations, and will include figures, summary tables, and the OMMP for the Log Pond. Reporting requirements for OMMP elements will be as described in the final Log Pond OMMP approved by Ecology.

2e. Restrictive Covenant.

The property on which the Work is to be performed is subject to a Restrictive Covenant made pursuant to RCW 70.105D.030(l)(f) and (g) and WAC 173-340-440. The Restrictive Covenant, attached as Exhibit B, sets forth limitations, restrictions, and uses to which the Property may be put and constitute covenants to run with the land. Exhibit B is hereby incorporated by reference as an enforceable part of this Agreed Order.

V.

TERMS AND CONDITIONS OF THE ORDER

1. Definitions.

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices.

Pursuant to RCW 70.105D.030(2)(a), this Order shall be subject to concurrent public notice.

Ecology shall be responsible for providing such concurrent public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs.

G-P shall pay costs incurred by Ecology pursuant to oversight of this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). G-P shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request.

Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Ms. Lucille T. Pebles
Washington Department of Ecology
Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008-5452
phone: (425) 649-7272
e-mail: lpeb461@ecy.wa.gov

The project coordinator for G-P is:

Mr. R. J. "Chip" Hilarides
Senior Environmental Engineer
Georgia-Pacific West, Inc.
P.O. Box 1236
Bellingham, WA 98227-1236
phone: (360) 647-5695
e-mail: rjhilari@gapac.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and G-P, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or G-P change project coordinator(s), written notification shall be provided to Ecology or G-P at least ten (10) calendar days prior to the change.

5. Performance.

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. G-P shall notify Ecology as to the identity of such engineer(s) or expert(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Log Pond. G-P shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, G-P shall not perform any remedial actions at the Log Pond outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Log Pond must be under the supervision of a professional engineer registered in Washington.

6. Access.

Ecology or any Ecology authorized representative shall have the authority to access the Log Pond and any associated remedial work areas at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other

documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by G-P. By signing this Agreed Order, G-P agrees that this Order constitutes reasonable notice of access, and agrees to allow access at all reasonable times for purposes of overseeing work performed under this Order. As necessary, Ecology shall allow split or replicate samples to be taken by G-P during an inspection unless doing so interferes with Ecology's sampling. G-P shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation.

G-P and Ecology shall prepare and/or update a public participation plan for the Work. Ecology shall maintain the responsibility for public participation and G-P shall help coordinate and implement public participation.

8. Retention of Records.

G-P shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of G-P, then G-P agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

G-P may request Ecology to resolve disputes that may arise during the implementation of this Order. Such request shall be in writing and directed to the

signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. G-P is not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement.

This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against G-P to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against G-P to require those remedial actions required by this Agreed Order, provided G-P complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Log Pond-should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Log Pond.

In the event Ecology determines that conditions at the Log Pond are creating or have the potential to create a danger to the health or welfare of the people in the surrounding area or to the environment, Ecology may order G-P to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property.

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Log Pond shall be consummated by G-P without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest G-P may have in the Log Pond or any portions thereof, G-P shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, G-P shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

A. All actions carried out by G-P pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Section IV and are binding and enforceable requirements of the Order.

G-P has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for

the remedial action under this Order. In the event G-P determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or G-P shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, G-P shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by G-P and on how G-P must meet those requirements. Ecology shall inform G-P in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. G-P shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunities for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply and G-P shall comply with both the procedural and

substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon G-P's receipt of written notification from Ecology that G-P has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.

ENFORCEMENT

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to this Agreed Order.

C. In the event G-P refuses, without sufficient cause, to comply with any term of this Order, G-P will be liable for:

(1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and

(2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: _____

GEORGIA-PACIFIC WEST, INC. STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By _____

James W. Cunningham
General Manager
Georgia-Pacific West, Inc.

Date _____

By _____

Steven M. Alexander
Section Manager
Toxics Cleanup Program –
Northwest Regional Office

Date _____